IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

Bail Appl..No. 6054 of 2007()

CRLMP.3824/2007 of DISTRICT COURT, THODUPUZHA
CRIME NO.177/07 OF VANDANMEDU POLICE STATION

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PETITIONER :

C.M.VIJAYAN, S/O.MADHAVAN,
CHETTUKAL HOUSE, VANDANMEDU, NIRAPPEL CITY,
IDUKKI DISTRICT.

BY ADV. SRI.TOM JOSE (PADINJAREKARA)

RESPONDENTS:

SUB INSPECTOR OF POLICE,
VANDANMEDU POLICE STATION, IDUKKI DISTRICT,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6054 OF 2007

Dated this the 8th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused. He along with the co-accused faces allegations under the Kerala Abkari Act. The co-accused (1st accused) was allegedly found transporting 1 litre of arrack in an autorikshaw driven by him. He was intercepted. There was another passenger in the autorikshaw. He, according to the prosecution, had no role in the possession and transportation of liquor. The 1st accused was arrested. He was interrogated. His interrogation furnished to the police, information about the involvement of the petitioner/the 2nd accused. As pointed out by the 1st accused, the Excise party reached the place where the petitioner was allegedly transacting the business. They recovered a large quantity of contraband liquor. The

petitioner was not available. He has been arrayed as an accused. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Merely on the statement of the co-accused, the petitioner is being proceeded against. The person in the autorikshaw, who was proceeding along with the 1st accused, has significantly not been proceeded against at all. In these circumstances, the petitioner may be granted anticipatory bail.

3. The learned Public Prosecutor opposes the application. The available indications clearly point to the culpable involvement of the petitioner in the transaction in illicit liquor. At any rate, there are no circumstances justifying or warranting the invocation of the discretion under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. This, I am satisfied, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course. I find no features in this case which would justify or warrant the

invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge